

Remarks/Arguments:

In response to the Final Office Action, the applicants offer the following remarks. Claims 1-18 are pending. Independent claim 1 has been substantively amended to address the cited references, being U.S. Patent No. 5,179,735 ("Thomanek") and U.S. Patent Application Publication No. US 2004/0070823 A1 ("Radna"). During a telephone conference with the Examiner on March 6, 2006, counsel for the applicants discussed and proposed revisions to claim 1, which have now been incorporated into this amendment.

The Office Action rejected independent claims 1 through 5, 7, 8, 11, 12, 13, and 17 under 35 U.S.C. § 103(a) as being unpatentable over *Thomanek*, in combination with *Radna*. Dependent claims 6, 9, 10, 14, 15, 16, and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the *Thomanek* patent and *Radna* patent application in combination with one or more additional secondary references.

A. Claim 1 Recites Patentable Subject Matter

As amended, claim 1 recites:

An apparatus for head mounting gear for hands free operation, comprising:

a head mounting means comprising a non-rigid encircling band adapted to encircle a head of a wearer at the wearer's forehead region, and a non-rigid top band adapted to go over the top of the head of the wearer and connected to said non-rigid encircling band;

a mounting bracket mounted to said non-rigid encircling band and to said top band, said mounting bracket having a pivot means;

a support bar having a proximal and distal end, said support bar being pivotally mounted at its proximal end to said pivot means of said mounting bracket;

said support bar being lockable by a detent mechanism in a position for use and a position for storage;

a quick release mounting mechanism mounted on the distal end of said support bar;

gear mounted to said quick release mounting mechanism being selected to be binoculars or a range finder; and

wherein said gear may be used without being held by hand.

(Emphasis added).

The support for the limitations included within independent claim 1, and the related dependent claims, is found at page 6, first and second paragraph noting that "the encircling band 14 and headband 16 are provided with length adjustment means, which may be any suitable means," and that the "[m]ounting bracket 24 is mounted to encircling band 14." Further, Figs. 1, 2, and 3 specifically show the encircling band 14 being in the region of the wearer's forehead, and the headband 16 connecting directly to the mounting bracket 24.

By contrast to the pending disclosure and claims, *Thomanek* teaches and shows a "head piece 47 [] formed of a laminated structure." *Thomanek*, col. 8, lines 59 through 63. The head piece 47 is made of several distinct elements, including a "U-shaped band portion 120," a "back pad 126," a "top webbing or strap 130," and "side webbing" or a "pair of side straps 131." As specifically disclosed by *Thomanek*, the head piece, including the U-shaped band portion 120, is made from a "carbon textile," col. 10, lines 3 through 5, using an epoxy and hardener. *Thomanek* describes the head piece as being "stiff" or rigid. *Thomanek*, col. 10, lines 23 through 24.

Two points of distinction are that there is no encircling band in the *Thomanek* invention that goes around the wearer's forehead region. Moreover, there is no top band in the *Thomanek* invention that connects to a mounting bracket and to any encircling band. In *Thomanek*, the side straps 131 cross behind the wearer's head *below or in the vicinity of the wearer's ears* and then connect to a chin piece 132.

Accordingly, by specific design, the *Thomanek* head piece does not have an encircling band and a top band that connect to each other and to a mounting bracket. Moreover, there is no suggestion or motivation in *Thomanek* for the head piece to include an encircling band to be worn around the wearer's forehead region, and there is no suggestion or motivation in *Thomanek* for a top band to be connected to any encircling band.

Similarly, the *Radna* patent application discloses the use of "any type of known headgear." *Radna*, page 3, paragraph [0039]. The description of the *Radna* headgear necessary to hold the video-recording mechanism for surgery, is that the headgear includes "a front band 2 and a headband 3, mounted on the head of the user. The frontal band 2 and/or the headband 3 may be made of a flexible hard plastic material that is easy to clean and disinfect." (*Radna*, page 3, paragraph [0039]) (emphasis added).

As in the *Thomanek* patent, there is no suggestion or motivation provided in the *Radna* patent application to use a flexible single band to encircle the wearer's head in the region of the wearer's forehead, and further having a second single band to go over the top of the wearer's head to connect to any mounting bracket. Both the *Thomanek* patent and *Radna* patent application disclose the use of hard or rigid head pieces that are comprised of multiple interconnecting pieces and elements, most of which are constructed of rigid carbon textile or a rigid thermoplastic material. The pending application discloses a much more simplified headgear comprising two interconnect pieces, both made of a non-rigid and flexible strapping material.

Accordingly, the advantages of the subject matter of claims 1 through 18 are not attained or suggested by the *Thomanek* patent or the *Radna* patent application, either individually or in combination. This is because claims 1 through 18 contain features as described above that are not taught or suggested by the applied references. As explained by Judge Rich in *In re Civitello*, 144 USPQ 10, 12 (CCPA 1964), when a claimed feature is not disclosed by the reference, the reference cannot render the claim obvious:

Since Haslach fails to disclose the feature of the claim relied on, we do not agree with the patent office that it would suggest modifying the Craig bag to contain the feature. The Patent Office finds the suggestion, only after making a modification which is not suggested, as we see it, by anything other than appellant's own disclosure. This is hindsight reconstruction. It does not establish obviousness. (Emphasis in original.)

Thus, the applicants do not agree with the Examiner that the *Thomanek* patent, either individually or in combination with the *Radna* patent application, support a prima facie case of obviousness.

B. Dependent Claims

Because claims 2 through 18 depend directly from claim 1, or claims that are dependent upon claim 1, which Applicant contends is a patentable claim, then dependent claims 2 through 18 claims are also patentable. *See, e.g., In re McCarrn*, 101 USPQ 411, 413 (CCPA 1954) ("sound law" requires allowance of dependent claims when their antecedent claims are allowed). Moreover, claims 2 through 18 are each non-obvious in view of the applied references.

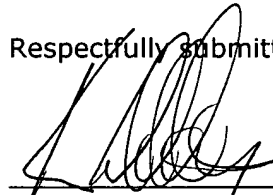
C. Conclusion

By this Amendment, pending claims 1 through 18 have been amended directly (or indirectly through an amendment to an independent claim) to place the application in better condition for examination and allowance.

The rejections under 35 U.S.C. § 103(a) should be withdrawn. Favorable action is earnestly solicited. Finally, the Examiner is invited to call the applicants' undersigned representative if any further action will expedite the prosecution of the application or if the Examiner has any suggestions or questions concerning the application or the present Response. In fact, if the claims of the application are not believed to be in full condition for allowance, for any reason, the applicants respectfully request the

constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims pursuant to MPEP § 707.07(j) or in making constructive suggestions pursuant to MPEP § 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,



Kevin W. Goldstein, Reg. No. 34,608
Attorney for Applicants

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Stradley Ronon Stevens & Young, LLP
Great Valley Corporate Center
30 Valley Stream Parkway
Malvern, PA 19355-1481
(610) 640-5800


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Bruce F. Barrie